

110TH CONGRESS
1ST SESSION

H. R. 4854

To amend the provisions of title 31, United States Code, relating to false claims to clarify and make technical amendments to those provisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 2007

Mr. BERMAN (for himself and Mr. SENSENBRENNER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the provisions of title 31, United States Code, relating to false claims to clarify and make technical amendments to those provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “False Claims Act Cor-
5 rection Act of 2007”.

6 **SEC. 2. LIABILITY FOR FALSE CLAIMS.**

7 Section 3729 of title 31, United States Code, is
8 amended to read as follows:

1 **“§ 3729. False claims**

2 “(a) LIABILITY FOR CERTAIN ACTS.—

3 “(1) IN GENERAL.—Any person who—

4 “(A) knowingly presents, or causes to be
5 presented for payment or approval a false or
6 fraudulent claim for Government money or
7 property,

8 “(B) knowingly makes, uses, or causes to
9 be made or used, a false record or statement to
10 get a false or fraudulent claim for Government
11 money or property paid or approved,

12 “(C) has possession, custody, or control of
13 Government money or property and, intending
14 to—

15 “(i) defraud the Government,

16 “(ii) retain a known overpayment, or

17 “(iii) knowingly convert the money or
18 property, permanently or temporarily, to
19 an unauthorized use,

20 fails to deliver or return, or fails to cause the
21 return or delivery of, the money or property, or
22 delivers, returns, or causes to be delivered or
23 returned less money or property than the
24 amount due or owed,

25 “(D) authorized to make or deliver a docu-
26 ment certifying receipt of property used, or to

1 be used, by the Government and, intending to
2 defraud the Government, makes or delivers the
3 receipt without completely knowing that the in-
4 formation on the receipt is true,

5 “(E) knowingly buys, or receives as a
6 pledge of an obligation or debt, public property
7 from an officer or employee of the Government,
8 or a member of the Armed Forces, who lawfully
9 may not sell or pledge the property,

10 “(F) knowingly makes, uses, or causes to
11 be made or used, a false record or statement to
12 conceal, avoid, or decrease an obligation to pay
13 or transmit money or property to the Govern-
14 ment, or

15 “(G) conspires to commit any violation set
16 forth in any of subparagraphs (A) through (F),
17 is liable to the United States Government for a civil
18 penalty of not less than \$5,000 and not more than
19 \$10,000, plus 3 times the amount of damages which
20 the Government or its administrative beneficiary
21 sustains because of the act of that person, subject
22 to paragraphs (2) and (3).

23 “(2) LESSER PENALTY IF DEFENDANT COOPER-
24 ATES WITH INVESTIGATION.—In an action brought
25 for a violation under paragraph (1), the court may

1 assess not less than 2 times the amount of damages
2 which the Government or its administrative bene-
3 ficiary sustains because of the act of the person
4 committing the violation if the court finds that—

5 “(A) such person provided to those officials
6 of the United States who are responsible for in-
7 vestigating false claims violations, all informa-
8 tion known to the person about the violation
9 within 30 days after the date on which the per-
10 son first obtained the information;

11 “(B) such person fully cooperated with any
12 Government investigation of the violation; and

13 “(C) at the time such person provided to
14 the United States the information about the
15 violation under subparagraph (A), no criminal
16 prosecution, civil action, or administrative ac-
17 tion had commenced with respect to such viola-
18 tion, and the person did not have actual knowl-
19 edge of the existence of an investigation into
20 such violation.

21 “(3) ASSESSMENT OF COSTS.—A person vio-
22 lating paragraph (1) shall, in addition to a penalty
23 or damages assessed under paragraph (1) or (2), be
24 liable to the United States Government for the costs

1 of a civil action brought to recover such penalty or
2 damages.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) the terms ‘known’, ‘knowing’, and ‘know-
5 ingly’ mean that a person, with respect to informa-
6 tion—

7 “(A) has actual knowledge of the informa-
8 tion,

9 “(B) acts in deliberate ignorance of the
10 truth or falsity of the information, or

11 “(C) acts in reckless disregard of the truth
12 or falsity of the information,

13 and no proof of specific intent to defraud is re-
14 quired;

15 “(2) the term ‘Government money or property’
16 means—

17 “(A) money or property belonging to the
18 United States Government;

19 “(B) money or property that—

20 “(i) the United States Government
21 provides or has provided to a contractor,
22 grantee, agent, or other recipient, or for
23 which the United States Government will
24 reimburse a contractor, grantee, agent, or
25 other recipient; and

1 “(ii) is to be spent or used on the
2 Government’s behalf or to advance a Gov-
3 ernment program; and

4 “(C) money or property that the United
5 States holds in trust or administers for any ad-
6 ministrative beneficiary;

7 “(3) the term ‘claim’ includes any request or
8 demand, whether under a contract or otherwise, for
9 Government money or property; and

10 “(4) the term ‘administrative beneficiary’
11 means any entity, including any governmental or
12 quasi-governmental entity, on whose behalf the
13 United States Government, alone or with others,
14 serves as custodian or trustee of money or property
15 owned by that entity.

16 “(c) STATUTORY CAUSE OF ACTION.—Liability
17 under this section is a statutory cause of action all ele-
18 ments of which are set forth in this section. No proof of
19 any additional element of common law fraud or other
20 cause of action is implied or required for liability to exist
21 for a violation of these provisions.

22 “(d) EXEMPTION FROM DISCLOSURE.—Any informa-
23 tion that a person provides pursuant to subparagraphs (A)
24 through (C) of subsection (a)(2) shall be exempt from dis-
25 closure under section 552 of title 5.

1 “(e) EXCLUSION.—This section does not apply to
2 claims, records, or statements made under the Internal
3 Revenue Code of 1986.”.

4 **SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.**

5 (a) ACTIONS BY PRIVATE PERSONS GENERALLY.—
6 Section 3730(b) of title 31, United States Code, is amend-
7 ed—

8 (1) in paragraph (1), by striking the last sen-
9 tence and inserting the following: “The action may
10 be dismissed only with the consent of the court and
11 the Attorney General.”;

12 (2) in paragraph (2), by inserting after the sec-
13 ond sentence the following: “In the absence of a
14 showing of extraordinary need, the written disclosure
15 of any material evidence and information, and any
16 other attorney work product, that the person bring-
17 ing the action provides to the Government shall not
18 be subject to discovery.”;

19 (3) in paragraph (4), by striking subparagraph
20 (B) and inserting the following:

21 “(B) notify the court that it declines to take
22 over the action, in which case the person bringing
23 the action shall have the right to conduct the action,
24 and, within 45 days after the Government provides
25 such notice, shall either—

1 “(i) move to dismiss the action without
2 prejudice, or

3 “(ii) notify the court of the person’s inten-
4 tion to proceed with the action and move the
5 court to unseal the complaint, and any amend-
6 ments thereto, so as to permit service on the
7 defendant and litigation of the action in a pub-
8 lic forum.

9 A person who elects to proceed with the action under sub-
10 paragraph (B)(ii) shall serve the complaint within 120
11 days after the person’s complaint is unsealed under such
12 subparagraph.”; and

13 (4) by amending paragraph (5) to read as fol-
14 lows:

15 “(5) When a person brings an action under this sub-
16 section, no person other than the Government may join
17 or intervene in the action, except with the consent of the
18 person who brought the action. In addition, when a person
19 brings an action that is pled in accordance with this sub-
20 section and section 3731(e), no other person may bring
21 a separate action under this subsection based on the facts
22 underlying a cause of action in the pending action.”.

23 (b) RIGHTS OF THE PARTIES TO QUI TAM AC-
24 TIONS.—Section 3730(c)(5) of title 31, United States

1 Code, is amended by striking the second sentence and in-
2 serting the following: “An alternate remedy includes—

3 “(A) anything of value received by the Govern-
4 ment from the defendant, whether funds, credits, or
5 in-kind goods or services, in exchange for an agree-
6 ment by the Government either to release claims
7 brought in, or to decline to intervene in or inves-
8 tigate the action initiated under subsection (b); and

9 “(B) anything of value received by the Govern-
10 ment based on the claims alleged by the person initi-
11 ating the action, if that person subsequently prevails
12 on the claims.

13 If any such alternate remedy is pursued in another pro-
14 ceeding, the person initiating the action shall have the
15 same rights in such proceeding as such person would have
16 had if the action had continued under this section, except
17 that the person initiating the action may not obtain an
18 award calculated on more than the total amount of dam-
19 ages, plus any fines or penalties, that could be recovered
20 by the United States under section 3729(a).”.

21 (c) AWARD TO QUI TAM PLAINTIFF.—Section
22 3730(d) of title 31, United States Code, is amended—

23 (1) in paragraph (1)—

24 (A) in the first sentence, by inserting “an
25 award of” after “receive”;

1 (B) by striking the second and third sen-
2 tences and inserting the following: “Any pay-
3 ment to a person under this paragraph or
4 under paragraph (2) or (3) shall be made from
5 the proceeds, and shall accrue interest, at the
6 underpayment rate under section 6621 of the
7 Internal Revenue Code of 1986, beginning 30
8 days after the date the proceeds are paid to the
9 United States, and continuing until payment is
10 made to the person by the United States.”; and

11 (C) in the last sentence, by striking “nec-
12 essarily”;

13 (2) in paragraph (2)—

14 (A) in the second sentence, by striking
15 “and shall be paid out of such proceeds”; and

16 (B) in the third sentence, by striking “nec-
17 essarily”; and

18 (3) by amending paragraph (3) to read as fol-
19 lows:

20 “(3)(A) Whether or not the Government proceeds
21 with the action, if the court finds that the action was
22 brought by a person who either—

23 “(i) planned and initiated the violation of sec-
24 tion 3729 upon which the action was brought, or

1 “(ii) derived his or her knowledge of the action
2 primarily from specific information relating to alle-
3 gations or transactions (other than information pro-
4 vided by the person bringing the action) that the
5 Government publicly disclosed, within the meaning
6 of subsection (e)(4)(A), or that it disclosed privately
7 to the person bringing the action in the course of its
8 investigation into potential violations of section
9 3729,

10 then the court may, to the extent the court considers ap-
11 propriate, reduce the share of the proceeds of the action
12 that the person would otherwise receive under paragraph
13 (1) or (2) of this subsection, taking into account the role
14 of that person in advancing the case to litigation and any
15 relevant circumstances pertaining to the violation. The
16 court shall direct the defendant to pay any such person
17 an amount for reasonable expenses that the court finds
18 to have been incurred, plus reasonable attorneys’ fees and
19 costs.

20 “(B) If the person bringing the action is convicted
21 of criminal conduct arising from his or her role in the vio-
22 lation of section 3729, that person shall be dismissed from
23 the civil action and shall not receive any share of the pro-
24 ceeds of the action. Such dismissal shall not prejudice the

1 right of the United States to continue the action, rep-
2 resented by the Department of Justice.”.

3 (d) CERTAIN ACTIONS BARRED.—Paragraph (4) of
4 section 3730(e) of title 31, United States Code, is amend-
5 ed to read as follows:

6 “(4)(A) Upon timely motion of the Attorney General
7 of the United States, a court shall dismiss an action or
8 claim brought by a person under subsection (b) if the alle-
9 gations relating to all essential elements of liability of the
10 action or claim are based exclusively on the public disclo-
11 sure of allegations or transactions in a Federal criminal,
12 civil, or administrative hearing, in a congressional, Federal
13 administrative, or Government Accountability Office re-
14 port, hearing, audit, or investigation, or from the news
15 media.

16 “(B) For purposes of this paragraph, a ‘public disclo-
17 sure’ includes only disclosures that are made on the public
18 record or have otherwise been disseminated broadly to the
19 general public. An action or claim is ‘based on’ a public
20 disclosure only if the person bringing the action derived
21 the person’s knowledge of all essential elements of liability
22 of the action or claim alleged in the complaint from the
23 public disclosure. The person bringing the action does not
24 create a public disclosure by obtaining information from
25 a request for information made under section 552 of title

1 5 or from exchanges of information with law enforcement
2 and other Government employees if such information does
3 not otherwise qualify as publicly disclosed under this para-
4 graph.”.

5 (e) RELIEF FROM RETALIATORY ACTIONS.—Sub-
6 section (h) of section 3730 of title 31, United States Code,
7 is amended to read as follows:

8 “(h) RELIEF FROM RETALIATORY ACTION.—Any
9 person who is discharged, demoted, suspended, threat-
10 ened, harassed, or in any other manner discriminated
11 against in the terms or conditions of employment, or is
12 materially hindered in obtaining new employment or other
13 business opportunities, by any other person because of
14 lawful acts done by the person discriminated against or
15 others associated with that person—

16 “(1) in furtherance of an actual or potential ac-
17 tion under this section, including investigation for,
18 initiation of, testimony for, or assistance in an ac-
19 tion filed or to be filed under this section, or

20 “(2) in furtherance of other efforts to stop one
21 or more violations of section 3729,

22 shall be entitled to all relief necessary to make the person
23 whole. Such relief shall include reinstatement with the
24 same seniority status such person would have had but for
25 the discrimination, 2 times the amount of back pay or

1 business loss, interest on the back pay or business loss,
2 and compensation for any special damages sustained as
3 a result of the discrimination, including litigation costs
4 and reasonable attorneys' fees. An action under this sub-
5 section may be brought in the appropriate district court
6 of the United States for the relief provided in this sub-
7 section.”.

8 (f) RELIEF TO ADMINISTRATIVE BENEFICIARIES.—
9 Section 3730 of title 31, United States Code, is amended
10 by adding at the end the following new subsection:

11 “(i) DAMAGES COLLECTED FOR FINANCIAL LOSSES
12 SUFFERED BY ADMINISTRATIVE BENEFICIARIES.—After
13 paying any awards due one or more persons who brought
14 an action under subsection (b), the Government shall pay
15 from the proceeds of the action to any administrative ben-
16 eficiary, as defined in section 3729(b), all amounts that
17 the Government has collected in the action for financial
18 losses suffered by such administrative beneficiary. Any re-
19 maining proceeds collected by the Government shall be
20 treated in the same manner as proceeds collected by the
21 Government for direct losses the Government suffers from
22 violations of section 3729. Nothing in section 3729 or this
23 section precludes administrative beneficiaries from pur-
24 suing any alternate remedies available to them for losses
25 or other harm suffered for them that are not pursued or

1 recovered in an action under this section, except that if
 2 such alternate remedy proceedings are initiated after a
 3 person has initiated an action under subsection (b), such
 4 person shall be entitled to have such alternative remedies
 5 considered in determining any award in the action under
 6 subsection (b) to the same extent that such person would
 7 be entitled under subsection (c)(5) with respect to any al-
 8 ternate remedy pursued by the Government.”.

9 **SEC. 4. FALSE CLAIMS PROCEDURE.**

10 (a) STATUTE OF LIMITATIONS; INTERVENTION BY
 11 THE GOVERNMENT.—Subsection (b) of section 3731 of
 12 title 31, United States Code, is amended to read as fol-
 13 lows:

14 “(b) STATUTE OF LIMITATIONS; INTERVENTION BY
 15 THE GOVERNMENT.—

16 “(1) STATUTE OF LIMITATIONS.—A civil action
 17 under section 3730 (a), (b), or (h) may not be
 18 brought more than 10 years after the date on which
 19 the violation of section 3729 or 3730(h) is com-
 20 mitted.

21 “(2) INTERVENTION.—If the Government elects
 22 to intervene and proceed with the action under sec-
 23 tion 3730, the Government may file its own com-
 24 plaint, or amend the complaint of a person who
 25 brought the action under section 3730(b), to clarify

1 or add detail to the claims in which it is intervening
2 and to add any additional claims with respect to
3 which the Government contends it is entitled to re-
4 lief. For purposes of paragraph (1), any such Gov-
5 ernment pleading shall relate back to the filing date
6 of the complaint of the person who originally
7 brought the action to the extent that the Govern-
8 ment's claim arises out of the conduct, transactions,
9 or occurrences set forth, or attempted to be set
10 forth, in the person's prior complaint.”.

11 (b) STANDARD OF PROOF.—Section 3731(c) of title
12 31, United States Code, is amended—

13 (1) by striking “(c) In” and inserting “(c)
14 STANDARD OF PROOF.—In”; and

15 (2) by striking “United States” and inserting
16 “plaintiff”.

17 (c) NOTICE OF CLAIMS; VOID CONTRACTS, AGREE-
18 MENTS, AND CONDITIONS OF EMPLOYMENT.—Section
19 3731 of title 31, United States Code, is amended by add-
20 ing at the end the following new subsections:

21 “(e) NOTICE OF CLAIMS.—In pleading an action
22 brought under section 3730(b), a person shall not be re-
23 quired to identify specific claims that result from an al-
24 leged course of misconduct if the facts alleged in the com-
25 plaint, if ultimately proven true, would provide a reason-

1 able indication that one or more violations of section 3729
2 are likely to have occurred, and if the allegations in the
3 pleading provide adequate notice of the specific nature of
4 the alleged misconduct to permit the Government effec-
5 tively to investigate and defendants fairly to defend the
6 allegations made.

7 “(f) VOID CONTRACT, AGREEMENTS, AND CONDI-
8 TIONS OF EMPLOYMENT.—

9 “(1) IN GENERAL.—Any contract, private
10 agreement, or private term or condition of employ-
11 ment that has the purpose or effect of limiting or
12 circumventing the rights of a person to take other-
13 wise lawful steps to initiate, prosecute, or support an
14 action under section 3730, or to limit or circumvent
15 the rights or remedies provided to persons bringing
16 actions under section 3730(b) and other cooperating
17 persons under section 3729 shall be void to the full
18 extent of such purpose or effect.

19 “(2) EXCEPTION.—Paragraph (1) shall not pre-
20 clude a contract or private agreement that is entered
21 into—

22 “(A) with the United States and a person
23 bringing an action under section 3730(b) who
24 would be affected by such contract or agree-

1 ment specifically to settle claims of the United
2 States and the person under section 3730; or

3 “(B) specifically to settle any discrimina-
4 tion claim under section 3730(h) of a person af-
5 fected by such contract or agreement.”.

6 (d) CONFORMING AMENDMENTS.—Section 3731 of
7 title 31, United States Code, is amended—

8 (1) in subsection (a), by striking “(a) A sub-
9 pena” and inserting “(a) SERVICE OF SUB-
10 POENAS.—A subpoena”; and

11 (2) in subsection (d), by striking “(d) Notwith-
12 standing” and inserting “(d) ESTOPPEL.—Notwith-
13 standing”.

14 **SEC. 5. FALSE CLAIMS JURISDICTION.**

15 Section 3732 of title 31, United States Code, is
16 amended by adding at the end the following new sub-
17 section:

18 “(c) SERVICE ON STATE OR LOCAL AUTHORITIES.—
19 With respect to any State or local government that is
20 named as a co-plaintiff with the United States in an action
21 brought under subsection (b), a seal on the action ordered
22 by the court under section 3730(b) shall not preclude the
23 Government or the person bringing the action from serv-
24 ing the complaint, any other pleadings, or the written dis-
25 closure of substantially all material evidence and informa-

tion possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments.”.

SEC. 6. CIVIL INVESTIGATIVE DEMANDS.

(a) CIVIL INVESTIGATIVE DEMANDS.—Section 3733(a)(1) of title 31, United State Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting “, or a designee (for the purposes of this section),” after “Whenever the Attorney General”; and

(2) in the matter following subparagraph (D), by—

(A) striking “may not delegate” and inserting “may delegate”; and

(B) adding at the end the following: “Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any a person bringing an action under section 3730(b) if the Attorney General or the designee determines that it is necessary as part of any false claims law investigation.”.

(b) PROCEDURES.—Section 3733(i)(3) of title 31, United States Code, is amended to read as follows:

1 “(3) USE OF MATERIAL, ANSWERS, OR TRAN-
2 SCRIPTS IN FALSE CLAIMS ACTIONS AND OTHER
3 PROCEEDINGS.—Whenever any attorney of the De-
4 partment of Justice has been designated to handle
5 any false claims law investigation or proceeding, or
6 any other administrative, civil, or criminal investiga-
7 tion, case, or proceeding, the custodian of any docu-
8 mentary material, answers to interrogatories, or
9 transcripts of oral testimony received under this sec-
10 tion may deliver to such attorney such material, an-
11 swers, or transcripts for official use in connection
12 with any such investigation, case, or proceeding as
13 such attorney determines to be required. Upon the
14 completion of any such investigation, case, or pro-
15 ceeding, such attorney shall return to the custodian
16 any such material, answers, or transcripts so deliv-
17 ered which have not passed into the control of a
18 court, grand jury, or agency through introduction
19 into the record of such case or proceeding.”.

20 (c) DEFINITIONS.—Section 3733(l) of title 31,
21 United States Code, is amended—

22 (1) in paragraph (6), by striking “and” after
23 the semicolon;

24 (2) in paragraph (7), by striking the period at
25 the end and inserting “; and”; and

1 (3) by adding at the end the following:

2 “(8) the term ‘official use’ means all lawful,
3 reasonable uses in furtherance of an investigation,
4 case, or proceeding, such as disclosures in connec-
5 tion with interviews of fact witnesses, settlement dis-
6 cussions, coordination of an investigation with a
7 State Medicaid Fraud Control Unit or other govern-
8 ment personnel, consultation with experts, and use
9 in court pleadings and hearings.”.

10 **SEC. 7. GOVERNMENT RIGHT TO DISMISS CERTAIN AC-**
11 **TIONS.**

12 Section 3730(b) of title 31, United States Code, is
13 amended by adding at the end the following:

14 “(6)(A) Not later than 60 days after the date of serv-
15 ice under paragraph (2), the Government may move to dis-
16 miss from the action the person bringing the action if the
17 person is an employee of the Federal Government and—

18 “(i) all the necessary and specific material alle-
19 gations contained in such action were derived from
20 an open and active fraud investigation by the execu-
21 tive branch of the Government; or

22 “(ii) subject to subparagraph (B), the person
23 bringing the action learned of the information that
24 underlies the alleged violation of section 3729 that

1 is the basis of the action in the course of the per-
2 son's employment by the United States.

3 “(B) In the case of a person to whom subparagraph
4 (A)(ii) applies—

5 “(i) if the employing agency has an Inspector
6 General and the person, before bringing the action—

7 “(I) disclosed in writing to the Inspector
8 General substantially all material evidence and
9 information that relates to the alleged violation
10 that the person possessed, and

11 “(II) notified in writing the person's super-
12 visor and the Attorney General of the disclosure
13 under subclause (I), or

14 “(ii) if the employing agency does not have an
15 Inspector General and the person, before bringing
16 the action—

17 “(I) disclosed in writing to the Attorney
18 General substantially all material evidence and
19 information that relates to the alleged violation
20 that the person possessed, and

21 “(II) notified in writing the person's super-
22 visor of the disclosure under subclause (I),

23 the motion under subparagraph (A) may be brought only
24 after a period of 12 months (and any extension under sub-
25 paragraph (C)) has elapsed since the disclosure of infor-

1 mation and notification under clause (i) or (ii) was made,
2 and only if the Attorney General has filed an action under
3 this section based on such information.

4 “(C) Before the end of the 12-month period described
5 under subparagraph (B), and upon notice to the person
6 who has disclosed information and provided notice under
7 subparagraph (B)(i) or (ii), the Attorney General may file
8 a motion seeking an extension of that 12-month period.
9 The court may extend that 12-month period for an addi-
10 tional period of not more than 12 months upon a showing
11 by the Government that the additional period is necessary
12 for the Government to decide whether or not to file an
13 action under this section based on the information. Any
14 such motion may be filed in camera and may be supported
15 by affidavits or other submissions in camera.

16 “(D) For purposes of subparagraph (B), a person’s
17 supervisor is the officer or employee who—

18 “(i) is in a position of the next highest classi-
19 fication to the position of such person;

20 “(ii) has supervisory authority over such per-
21 son; and

22 “(iii) such person believes is not culpable of the
23 violation upon which the action under this sub-
24 section is brought by such person.

1 “(E) A motion to dismiss under this paragraph shall
2 set forth documentation of the allegations, evidence, and
3 information in support of the motion.

4 “(F) Any person bringing an action under paragraph
5 (1) shall be provided an opportunity to contest a motion
6 to dismiss under this paragraph. The court may restrict
7 access to the evidentiary materials filed in support of the
8 motion to dismiss, as the interests of justice require. A
9 motion to dismiss and papers filed in support or opposition
10 of such motion may not be—

11 “(i) made public without the prior written con-
12 sent of the person bringing the civil action; and

13 “(ii) subject to discovery by the defendant.

14 “(G) If the motion to dismiss under this paragraph
15 is granted, the matter shall remain under seal.

16 “(H) Not later than 6 months after the date of the
17 enactment of this paragraph, and every 6 months there-
18 after, the Attorney General shall submit to the Committee
19 on the Judiciary of the Senate and the Committee on the
20 Judiciary of the House of Representatives a report on—

21 “(i) the cases in which the Department of Jus-
22 tice has filed a motion to dismiss under this para-
23 graph;

24 “(ii) the outcome of such motions; and

1 “(iii) the status of the civil actions in which
2 such motions were filed.”.

3 **SEC. 8. EFFECTIVE DATE.**

4 The amendments made by this Act shall take effect
5 on the date of the enactment of this Act and shall apply
6 to any case pending on, or filed on or after, that date.

○